

**PUBLIC UTILITY COMMISSION OF OREGON  
ADMINISTRATIVE HEARINGS DIVISION REPORT  
PUBLIC MEETING DATE: March 16, 2004**

**Upon Filing with the  
Secretary of State of  
Oregon**

REGULAR  X  CONSENT \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_

**DATE:** February 26, 2004

**TO:** Commissioners Beyer, Baum, and Savage

**FROM:** Christina Smith, Administrative Law Judge

**REVIEWED BY:** Terry Lambeth, Rules Project Leader

**SUBJECT:** AR 471: Adopt and amend rules related to water regulation to implement HB 2226 and HB 2227 from the 2003 Oregon Legislative Assembly.

**ADMINISTRATIVE LAW JUDGE RECOMMENDATION:**

Amend existing rules and adopt proposed rules related to water regulation to implement Oregon Laws 2003, chapters 82 and 202, and adopt attached order.

**DISCUSSION:**

This rulemaking makes many changes and additions to rules related to water regulation to implement new legislation. The legislation was the product of a Water Issues Steering Committee convened by the Commission at the behest of the 2001 Legislature to undertake a broad review of water regulation policy. The Committee's final report recommended the following changes to the statutes:

1. Amend the law to require that once a water utility meets the definition of a "public utility" it remains a public utility thereafter.
2. Amend the law to allow water utilities to include in rates "Construction Work In Progress."
3. Amend the law to allow water public utilities to request rate regulation.
4. Amend the law to allow the Commission to impose penalties up to \$500 for violations of statutes, rules, and orders.
5. Revise current statutes to include water utilities associations providing water services to retail consumers.

6. Amend the law to make it the utility's discretion whether it applies for an exclusive service territory.
7. Amend the law to remove the 300-customer threshold that qualifies water companies as "public utilities."

These recommendations became the basis for HB 2226 and HB 2227, which became law and are now codified as Oregon Laws 2003 chapter 82 and Oregon Laws 2003 chapter 202 respectively. Temporary rules were approved by the Commission at the December 4, 2003, public meeting. At that meeting, this docket was opened to draft permanent rules to implement the legislation. The comment period for this rulemaking closed February 6, 2004, and a hearing was held January 22, 2004.

Crooked River Ranch Water Company (CRRW) submitted written comments on January 16, 2004, made verbal comments at the January 22, 2004 hearing, and submitted additional comments on February 12, 2004. CRRW expressed several concerns about the rules, most of which involve decisions made by the legislature which do not give the PUC any discretion. The highlights are as follows:

1. CRRW: If 20 percent of a water company's customers petition the Commission for regulation, the company will be regulated forever after, even if the other 80 percent may not have wanted regulation. Proposed OAR 860-036-0412.  
Response: The Commission does not have discretion in this matter; it is required by the legislature. Oregon Laws 2003, chapter 82, § 3.
2. CRRW: Concerned that civil penalties and petition process will be abused by a few dissatisfied customers. Proposed OAR 860-036-0380; 860-037-0309.  
Response: The requirements for the notice and hearing written into the proposed rule are in compliance with standards under the Administrative Procedures Act (APA), codified in ORS 183.090. The PUC is not an APA agency, but those standards are a good guideline for acceptable procedure.
3. CRRW: Definition of association is vague and inconsistent. Response: This comment has merit and was addressed by changes made in the rulemaking.

Staff proposed several changes to clarify the rules in response to CRRW's comments and submitted comments noting the legislature's directives in the two new laws.

#### **PROPOSED COMMISSION MOTION:**

Amend existing rules and adopt proposed rules related to water regulation to implement Oregon Laws 2003, chapters 82 and 202, and adopt attached order.

ORDER NO.

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 471

In the Matter of a Proposed Rulemaking,        )  
related to Water Utility Regulation to        )  
Implement Oregon Laws 2003, chapters 82    )  
and 202.    )    ORDER

DISPOSITION: NEW RULES ADOPTED, EXISTING RULES AMENDED

This rulemaking adopts new rules and amends existing rules related to water utilities. The 2003 Oregon Legislature passed two bills that changed the laws related to regulation of water utilities effective January 1, 2004. Temporary amendments and new rules were initially adopted in AR 470 to implement the new laws. This docket adopts permanent changes to implement those new laws.

**PROCEDURE**

In response to concerns expressed by the 2001 Legislature, the Commission convened a Water Issues Steering Committee (Committee) to conduct a broad review of the state's water utility regulation. The Committee was comprised of water utility owners (large, medium, and small), customers and associations of customers, a public interest group, and an affected state government agency (Department of Human Services, Drinking Water Program). The Committee included representatives from Central Oregon, the Willamette Valley, and the Coast. The Committee met five times between January 2002 and June 2002, and presented its final report to the Commission in August 2002. In the report the Committee recommended the following changes to the statutes:

1. Amend the law to require that once a water utility meets the definition of a "public utility" it remains a public utility thereafter.
2. Amend the law to allow water utilities to include in rates "Construction Work In Progress."
3. Amend the law to allow water public utilities to request rate regulation.
4. Amend the law to allow the Commission to impose penalties up to \$500 for violations of statutes, rules, and orders.

5. Revise current statutes to include water utilities associations providing water services to retail consumers.
6. Amend the law to make it the utility's discretion whether it applies for an exclusive service territory.
7. Amend the law to remove the 300-customer threshold that qualifies water companies as "public utilities."

The 2003 Legislature approved the above-named statute revisions in HB 2226 and HB 2227, which were codified at Oregon Laws 2003, chapter 82 and chapter 202, respectively. In addition, Oregon Laws 2003, chapter 202, included a law that allows the PUC to use up to \$5,000 per biennium to make emergency repairs to water systems when the public health or safety are at risk and the owner is unable or unwilling to make the repairs.

The new laws went into effect on January 1, 2004. A temporary rulemaking docket was opened in September 2003 and temporary rules were approved by the Commission at the December 4, 2003, public meeting. At that same public meeting, this docket was opened to enact permanent rules to implement the legislation. Many of the proposed permanent rules mirrored the temporary rules.

The permanent rulemaking docket was noticed in the Secretary of State's Bulletin published January 1, 2004. The comment period was originally set to expire January 22, 2004, and a hearing was held on that day. At the hearing, Staff requested that the comment period be extended. The deadline for written comments was extended to February 13, 2004. Oral comments were accepted at the public meeting at which the rules were adopted.

## **PUBLIC COMMENTS**

Crooked River Ranch Water Company (CRRW or the Company) was the only private participant to file comments. Those comments addressed several matters in the rulemaking, which are discussed below.

First and foremost, CRRW does not feel that all of its customers should be subject to regulation if a petition is submitted by only 20 percent of its customers. New OARs 860-036-0412 and 860-037-0407 allow 20 percent of association members to submit a petition to the Commission asking that their water company be regulated. No other requirements need be met for the Commission to assert authority over the water company to regulate its rates. The Commission would then notify the water company, and the water company would be required to file tariffs with the Commission. Currently, if certain requirements are met, 20 percent of the customers of a water company may file a petition with the Commission, triggering Commission regulation of the water company. The new rules do not allow the Commission discretion to determine whether the water company should be regulated, because the Legislature did not provide any discretion to the Commission:

- (1) Any association of individuals that furnishes water to members of the association is subject to regulation in the same manner as provided by this

chapter for public utilities, and must pay the fee provided for in ORS 756.310, if 20 percent or more of the members of the association file a petition with the Public Utility Commission requesting that the association be subject to such regulation.

(2) The provisions of this section apply to an association of individuals even if the association does not furnish water directly to or for the public. The provisions of this section do not apply to any cooperative formed under ORS chapter 62 or to any public body as defined by ORS 174.109.

Or Laws 2003, ch. 82, § 3. The company may ask for reconsideration of the designation, but the Commission's discretion is limited to whether the signatures are valid and whether at least 20 percent of the customers have signed a petition. Because the Legislature enacted the 20 percent petition threshold into statute, we decline to address CRRW's concerns regarding that matter.

Second, CRRW expresses concern that Staff's summary, the first point in Attachment B to the draft rules, states that once a water utility is brought under regulation, it will be regulated in perpetuity. CRRW specifically objects to Staff's use of the word "thereafter." The Company argues that neither the rules nor the statutes state that regulation shall be continuous. Although the summary has no legal effect, we note that the new law also uses the word "thereafter" and once a utility is brought under regulation under certain circumstances, it will remain regulated. The Legislature amended ORS 757.061 to read as follows:

(4) A water utility that serves fewer than 500 customers and that is found by the Public Utility Commission to have provided inadequate or discriminatory service at any time is *thereafter* subject to regulation under this chapter and must pay the fee provided for in ORS 756.310.

(5) A water utility that serves fewer than 500 customers and that at any time charges an average annual residential rate of \$18 per month or more is *thereafter* subject to regulation under this chapter, other than financial regulation, and must pay the fee provided for in ORS 756.310.

Or Laws 2003, ch. 82, § 1 (emphasis added). Again, the Commission's rules and policy are in compliance with the Legislature's direction, and there is no discretion for the Commission to take other action.

Third, CRRW is concerned that civil penalties could be used against it without opportunity for a fair hearing, or abused by dissatisfied customers. Again, CRRW's concerns are misplaced. Civil penalties are allowed by the new law, Oregon Laws 2003, chapter 202, section 3, as follows:

(1) In addition to all other penalties provided by law, a person who violates any statute, rule or order of the Public Utility Commission related to water utilities is

subject to a civil penalty of not more than \$500 for each violation. The commission may require that penalties imposed under this section be used for the benefit of the customers of water utilities affected by the violation.

(2) Notwithstanding ORS 183.090(7)(d), 183.315(6) and 756.500 to 756.610, civil penalties under this section must be imposed by the commission as provided in ORS 183.090.

ORS 183.090 provides procedures by which an agency notifies an individual of a civil penalty and an individual may request a hearing. Proposed OARs 860-036-0380 and 860-037-0309 each direct the Commission to first send a warning letter, then a notice with specific contents. Then a utility has 20 days to request a hearing. These requirements expressed in the Commission rules comply with the requirements in ORS 183.090 and are designed so that a utility will not be surprised by civil penalties without opportunity to correct violations that give rise to the penalties. In its written testimony and at the hearing, CRRW indicated that it was improper for civil penalties such as ongoing regulation to be levied without notice and a hearing. However, regulation is not a civil penalty. For the aforementioned reasons, the proposed rules are in compliance with the statutes passed by the Legislature, and we decline to address CRRW's comments on this issue.

CRRW also raised several other issues which we considered.

- CRRW states that the Staff summary in the Notice of Proposed Rulemaking stated that the PUC is authorized to "use up to \$5,000 of gross revenue fees per biennium." Proposed OAR 860-036-0370(1) states, "The Commission may use up to \$5,000 per biennium of the fees collected." There is no material difference between the two statements, and no clarification is required.
- CRRW objects to dropping the word "rate" from discussion of regulation pursuant to a petition by 20 percent of the customers under Oregon Laws 2003, chapter 82, section 3 and proposed OAR 860-036-0412. Under the new statutory provision, an association will be "subject to regulation in the same manner as provided by this chapter for public utilities" if 20 percent of the customers submit a petition. Regulation "as provided by this chapter" means that a utility with 500 or more members is automatically regulated for both rates and service; a utility with fewer than 500 members may be subject to rate and/ or service regulation depending on whether it qualifies under the factors in ORS 757.061. Consequently, the rule should not specify either rate or service regulation; that must be determined on a case-by-case basis. The rule properly refers to "regulation" alone.
- CRRW refers to a particular petition presented to Staff for an advisory opinion at the hearing. That cannot be addressed in this rulemaking. However, in its discussion of the petition, CRRW asks what triggers the six-month validity period for petitions in OAR 860-036-0412(8). The rule makes it clear that the date on which the petitions are filed with the Commission starts the six-month period.

- CRRW also asks for a clarification of the "threshold level" referred to in OAR 860-036-0410(2). That is a reference to the thresholds specified in OAR 860-036-0030. Those rules refer to triggering regulation for utilities that have 500 or fewer customers. Utilities with more than 500 customers are already subject to full regulation. See ORS 757.061 (only utilities with fewer than 500 customers may be exempt from certain regulation). CRRW also asks when it will know if it has exceeded the threshold level. Presumably the utility knows what rates it charges and the laws to which it is subject. Barring that, when a utility charges more than the threshold, it has an obligation to tell customers that they have the right to petition the Commission for regulation. If 20 percent of the utility's customers petition the Commission for regulation, the utility will be subsequently notified that it will be subject to increased regulation.
- CRRW also complains that the Staff summary references to OAR 860-036-0010(21) for a definition of "public utility" are incorrect references. Staff's references are to the current OAR 860-036-0010(21) definition of "public utility;" after approval of these new rules, OAR 860-036-0010(21) will define "public utility district."

CRRW did make several good points in its comments. First, it pointed out that Commission rules do not define "association" in a way that is helpful. OAR 860-036-0010 defines association as "an incorporated or homeowner association providing water service, as defined in ORS 757.005." However, ORS 757.005 defines "public utility" with reference to "[a]ny \* \* \* association of individuals \* \* \* that owns, operates, manages or controls" equipment for provision of utility service. Similarly, Oregon Laws 2003, chapter 82, section 3, refers to "any association of individuals." Staff added a definition of association in OAR 860-036-0412(1), attached as Appendix A, that parrots the statutory language and clarifies the rule. Second, CRRW asked why letters are permitted in OAR 860-036-0412(3), instead of a petition, which the statute seems to require. Staff clarified the rule to indicate that letters may be included in the petition requirement, and CRRW noted its satisfaction with this clarification in subsequent comments. See OAR 860-036-0412(4), Appendix A. Third, CRRW noted that the words "a threshold level" in OAR 860-036-0410 are vague and unsupported. The threshold level is an average monthly rate charged by a utility to its customers as discussed in ORS 757.061(7): "The commission shall adopt rules establishing maximum rates for water utilities serving fewer than 500 customers \* \* \*." Those maximum rates, or threshold levels, are specified in OAR 860-036-0030. To satisfy CRRW's concerns, Staff clarified the rule by adding a reference to the threshold levels in OAR 860-036-0030, as indicated. See Appendix A. Each of those changes recommended by Staff improve the draft rules and we adopt the proposed and amended rules with Staff's clarifications.

**ORDER**

IT IS ORDERED that:

1. The proposed rules and amendments to existing rules, attached as Appendix A, are adopted.
2. The new rules shall be effective upon filing with the Secretary of State.

Made, entered, and effective \_\_\_\_\_.

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**Lee Beyer**  
Chairman

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**John Savage**  
Commissioner

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**Ray Baum**  
Commissioner

A person may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

## 860-036-0010

### Definitions for Water Utilities and Associations

As used in Division 036:

- (1) "Actual cost" means the direct cost of parts, materials and labor of a specific item or project separated from indirect costs.
- (2) "Applicant" means a person who:
  - (a) Applies for service with a utility; or
  - (b) Reapplies for service at a new or existing location after service has been discontinued.
- (3) "Association" means an incorporated or homeowner association providing water service, as defined in ORS 757.005.
- (4) "Co-customer" means a person who meets the definition of "customer" and is jointly responsible with another person for payments for water utility service on an account with the water utility. If only one of the co-customers discontinues service in his/her name, the remaining co-customer shall retain customer status only if he/she reapplies for service in his/her own name within 20 days of such discontinuance provided the water utility contacts the co-customer or mails a written request for an application to the remaining co-customer within one business day of the discontinuance.
- (5) "Commercial customer" means a customer who performs or produces a service or product that is a source of revenue, income or livelihood to the customer or others using the premises.
- (6) "Commission" means the Public Utility Commission of Oregon.
- (7) "Contributions in aid of construction" means any money, services or property received by a water utility to fund capital investments at no cost to the company with no obligation to repay.
- (8) "Construction work in progress (CWIP)" means account 105 in the utility plant section of the balance sheet representing the costs of utility plant under construction but not yet placed in service.**
- ~~(9)~~ "Cooperative" means a cooperative corporation as defined in ORS Chapter 62.
- ~~(10)~~ "Cost-based" means the direct and indirect costs of a specific item or project, including overhead and a reasonable expected return on investment.
- ~~(11)~~ "Customer" means a person who has applied for, been accepted, and is currently receiving service unless otherwise noted. Notwithstanding section (1) of this rule, a customer who voluntarily disconnects service and subsequently asks for service with the same water utility at a new or existing location within 20 days after disconnection retains customer status.
- ~~(12)~~ "District" means a corporation as defined under ORS Chapter 198.
- ~~(13)~~ "Emergency" means an extraordinary interruption of the usual course of water service by a natural cause, an unforeseen event, or a combination of unexpected circumstances; an urgent need for assistance or relief; or the resulting state that calls for immediate action.
- ~~(14)~~ "End-user" means a domestic water user.
- ~~(15)~~ "Exempt water company" means a water company that meets the definition of a public utility in ORS 757.005, but is exempt from regulation as provided in ORS 757.005(1)(b)(E).
- ~~(16)~~ "Forced connection" means a water utility or its customers being required by law, regulation, rule, or company policy to retrofit, improve, or change the original service connection. All retrofits, improvements, additions or changes to the original service connection will be the operational and financial responsibility of the company, with the following exceptions (1) any national or state laws or rules clearly assigning such costs to the customer, or (2) the Commission otherwise approves as provided in OAR 860-036-0105(1) and (2).

(176) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(187) "Large commercial customer" means a commercial customer with a meter or pipe diameter of two inches or larger.

(198) "Mainline extension" means the extension of a main line to an area not previously served. If the main line extension is required at the request of a potential customer to receive service, the cost of such extension shall comply with the water utility's main line extension policy.

(2019) "Meter set" means the parts, material, and labor necessary to install a meter. The meter set assembly is owned, installed, and maintained by the utility. The meter set does not include any components of the service connection required to provide unmetered service.

(210) "People's utility district" (PUD) means a corporation as defined in ORS Chapter 261.

(224) "Public utility" has the meaning given the term in ORS 757.005 and ORS 757.061. The term does not include districts, People's Utility Districts (PUDs), cooperatives, or municipalities.

(232) "Rate-regulated utility" means a water utility that is not exempt from certain financial regulations and conditions under ORS 757.061.

(243) "Registered dispute" means an unresolved issue between a customer or applicant and a water utility that is under investigation by the Commission's Consumer Services, but is not the subject of a formal complaint.

(254) "Residential customer" means a customer who receives domestic or irrigation water in residential areas and is not considered a commercial customer.

(265) "Small commercial customer" means a commercial customer with a meter or pipe diameter of less than two inches.

(276) "System development fee or charge" is the proportionate fee charged by a water company prior to service being initiated that encompasses the cost of the system allocated to all potential customers.

(287) "Utility" means any water utility, except when a more limited scope is explicitly stated.

(298) "Water utility" has the same meaning as public utility in section (22) of this rule, except if a more limited scope is explicitly stated.

Stat. Auth.: ORS Ch. 183, 756 & 757

Stats. Implemented: ORS 756.040 & 756.105

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 9-2001, f. & cert. ef. 3-21-01 (Order No. 01-248); PUC 22-2001 (Temp), f. & ef. 9-26-01 (Order No. 01-828); PUC 8-2002, f. & ef. 2-26-2002 (Order No. 02-116); PUC 18-2003, f. & ef. 10-6-03 (Order No. 03-592)

## **860-036-0030**

### **Threshold Levels of Rates and Charges for Water Utilities Serving Fewer than 500 Customers**

(1) Pursuant to ORS 757.061(2) the Commission adopts the following maximum rates and charges for water utilities serving fewer than 500 customers:

- (a) \$24 annual average monthly residential or small commercial service rate;
- (b) \$85 annual average monthly service rate for large commercial customers; and
- (c) ~~\$300~~\$450 for standard service connection charge.

(d) Any system development fee, facilities charge, or other like charge shall be cost based and demonstrated as such to the Commission's satisfaction upon request of the Commission.

(2) A standard service connection is defined in OAR 860-036-0060.

Stat. Auth.: ORS Ch. 183, 756 & 757

Stat. Implemented: ORS 757.061

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 18-2003, f. & ef. 10-6-03 (Order No. 03-592)

## **860-036-0120**

### **Meter Readings and Bill Forms**

(1) Every water utility providing metered service shall indicate clearly on the meter the units of service for which the charge is made to the customer, except when automatic meter reading systems preclude such facilities.

(2) All water service bills shall show the beginning and ending meter readings for the period the bills ~~are is~~ rendered, the date of the meter readings, the number of units of service supplied clearly stated (gallons or cubic feet), the schedule number under which the bill was computed, and any other information needed to compute the bill. Each bill shall bear on its face the delinquent date of the bill and the water utility's telephone number. When there is good reason for so doing, estimated bills may be submitted. Any estimated reading shall be clearly designated as such on the bill.

(3) As a matter of general practice, all service meters shall, as nearly as possible, be read at monthly intervals on the corresponding day of each meter reading period. Meters may be read at other than monthly intervals, if the Commission is given notice and does not object to the water utility's meter reading proposal. The water utility shall provide each customer a written statement that explains the disadvantages of having the meter read and billed less often than monthly. If at any time the Commission determines that circumstances warrant, a water utility may be required to return to monthly meter reading.

(a) When access to a meter is difficult due to the meter location or other circumstance, the water utility shall seek the customer's cooperation in obtaining monthly meter readings (for example, having the customer complete and return a meter reading form). Any customer reading shall be subject to actual verification by the water utility not less than once every four months;

(b) Each customer shall provide the water utility with regular access to the meter on the customer's property. Failure to permit the water utility access at reasonable times and after reasonable written notice of requested access is grounds for disconnection.

(4) Upon written request by a customer, the water utility shall cause the meter reader, when the customer's meter is read, to leave on such meter or with such customer, a card showing the actual meter reading and the date and time such reading was made.

(5) Water utilities shall make reasonable efforts to prepare opening and closing bills from actual meter readings.

Stat. Auth.: ORS Ch. 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.250

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 15-1998, f. & ef. 8-27-98 (Order No. 98-359); PUC 8-2002, f. & ef. 2-26-2002 (Order No. 02-116)

**860-036-0330**

**Service Credit for Inadequate Service**

~~—(1) Upon finding that a water utility rendered inadequate service, the Commission may require the water utility to provide service credits to affected customers as follows:~~

~~—(a) Credits shall be based upon the duration of the inadequate service as follows: 1–30 days, one third of customer regular fixed or flat monthly charges; 31–60 days, one half of customer regular fixed or flat monthly charges; 61–90 days, two thirds of customer regular fixed or flat monthly charges; 91 days until corrected, credit entire monthly fixed or flat charges.~~

~~—(b) Such credits shall be limited to a six-month period unless otherwise extended by the Commission.~~

~~—(2) Inadequate service credits are applicable only to deficiencies found in the water utility's system or those found to be in the control of the water utility. Deficiencies originating on the customer's portion of the system caused by the customer's negligence or willful misconduct, a natural disaster, or damage to the water system caused by a third party unaffiliated with the water utility will not be eligible for inadequate service credits.~~

~~—Stat. Auth.: ORS Ch. 183, 756 & 757~~

~~—Stat. Implemented: ORS 756.040~~

~~—Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 8-2002, f. & ef. 2-26-2002 (Order No. 02-116)~~

**860-036-0370**

**Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs**

**(1) The Commission may use up to \$5,000 per biennium of the fees collected under ORS 756.310 to make emergency repairs for water utilities. The Commission may expend monies under the provisions of this rule if the Commission determines that:**

**(a) Customers of a utility are without service and are likely to remain without service for an unreasonable period of time;**

**(b) The utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and**

**(c) Restoration of the service is necessary for the health and safety of the customers of the utility.**

**(2) The Commission shall promptly attempt to recover fees used under this rule from the utility providing water service. No interest shall accrue on the outstanding balance.**

**(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the fees are expended.**

**Stat. Auth.: ORS Ch. 183, 756 & Ch. 202, OL 2003**

**Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003**

**Hist.: NEW**

**860-036-0380**

**Commission-Assessed Civil Penalties for Noncompliance**

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 for each violation of state statutes, Oregon administrative rules, or Commission orders related to water utilities.

(2) Prior to assessing civil penalties, the Commission may send a warning letter to the water utility by registered or certified mail. The warning letter must include, but not be limited to, the following:

(a) A statement that the water utility is in violation of state statutes, Oregon administrative rules, or Commission orders;

(b) The time allowed for correcting the violation(s); and

(c) A statement that, if the violations are not corrected within the time allowed, staff may make a recommendation to the Commission to assess civil penalties.

(3) The Commission must give notice of civil penalties by registered or certified mail to the water utility incurring the penalties. The notice must include, but is not limited to the following:

(a) The section of the statute, rule, or order violated;

(b) A concise statement of the violation(s) asserted or charged;

(c) A statement of the amount of civil penalties that may be assessed;

(d) A statement of the water utility's right to request a hearing within 20 calendar days of the date of service of the notice; and

(e) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) Within 20 calendar days of the date of service of the notice, the water utility incurring the penalties may request a hearing. Such request must be in writing and shall state what actions, if any, have been made to correct the violation(s) stated in the notice. If the water utility does not request a hearing within the time allowed, or if the water utility requesting a hearing fails to appear, the Commission may issue a final order imposing the penalty.

(5) The Commission may require that penalties imposed under this rule be used for the benefit of the customers of water utilities affected by the violation(s).

Stat. Auth.: ORS Ch. 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 183.090, 756.040 & Ch. 202, OL 2003

Hist.: NEW

**860-036-0410**

### **Relating to Rate Regulation of Water Utility by Customer Petition**

(1) As used in this section, "customer" means individual residential dwelling or commercial unit served by the water utility. Hotels, motels, and recreational vehicle (RV) parks shall be deemed one commercial customer, except those individuals who use such facilities as a primary residence shall also be counted as customers.

(2) Once a water utility has exceeded a threshold level, as defined in OAR 860-036-0030, and if the Commission did not receive a petition from 20 percent or more of the customers, the customers may submit a petition to the Commission at any time for full rate regulation. Petitioners must be current customers of the water utility. Such petitions are in effect for six months~~one year~~. Petitions ~~one year or~~ older than six months must be resubmitted to the Commission.

(3) Petitions must be in writing, state the purpose of the petition, and include the customer's name, address, telephone number, and signature.

(4) Individual customer letters may be submitted in lieu of a petition.

(5) If 20 percent of customers petition the Commission, the water utility will be notified by the Commission, in writing, of its change in status to a rate-regulated water utility.

(6) The water utility must file appropriate tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.

(7) If the water utility fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(8) Customer petitions filed with the Commission requesting rate regulation of a water utility may not be withdrawn or rescinded.

(9) Existing nonpetitioned rates and charges will be deemed interim rates and may be subject to refund during the pendency of the tariff filing application. The period of refund will begin on the date of the notice requiring a tariff filing sent by the Commission, unless the date the water utility began serving 500 customers can be reasonably determined, and end on the issuance date of the Commission order establishing new rates. Refunds may be limited to those charges and fees, or a portion thereof, paid by customers determined by the Commission to be unreasonable, excessive, or not justified by the water utility's cost. At the discretion of the Commission, any such refund may include interest.

Stat. Auth.: ORS Ch. 183, 756 & 757

Stat. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 8-2002, f. & ef. 2-26-2002 (Order No. 02-116); PUC 18-2003, f. & ef. 10-6-03 (Order No. 03-592)

### **860-036-0412**

#### **Request for Rate Regulation of an Association by Members**

**(1) For purposes of this rule, "association" means any association of individuals that furnishes water to members of the association, even if the association does not furnish water directly to or for the public. This rule does not apply to any cooperative formed under ORS chapter 62 or to any public body as defined by ORS 174.109.**

**(2) Association members may submit a petition to the Commission at any time for regulation of a water system owned, operated, managed, or controlled by an association. Petitioners must be current members of the water association.**

**(3) Petitions must be in writing, state the purpose of the petition, and include the member's name, address, telephone number, and signature.**

**(4) The Commission will consider individual letters submitted by association members, which meet the criteria of subsection (3), as petitions for the purposes of calculating the 20 percent requirement.**

**(5) If 20 percent of association members petition the Commission, the Commission must issue an order notifying the association of its change in regulatory status to a regulated water utility.**

**(6) If required by the regulatory change, the association must file tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.**

(7) If the association fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(8) Petitions filed with the Commission may not be withdrawn or rescinded and are valid for six months.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 082, OL 2003

Stat. Implemented: ORS 756.040 & Ch. 082, OL 2003

Hist.: NEW

#### **860-036-0420**

##### **Request for Rate Regulation by a Water Utility**

(1) Any water utility serving fewer than 500 customers may, at any time, file a petition with the Commission for full rate regulation of the water utility.

(2) When the water utility files the petition with the Commission requesting rate regulation, the water utility must also provide written notification to its customers. The water utility must provide the Commission with a copy of the notice. At a minimum, the notice must include the following information:

(a) Name, address, and telephone number of the water utility;

(b) Purpose of the notice;

(c) The reason(s) the water utility is seeking rate regulation;

(d) The Commission's toll-free telephone number, TTY number, and its mailing and location addresses. The information is available on the Commission website or by calling the Commission; and

(e) A statement informing customers that ORS 757.061 was amended in 2003 to allow water utilities to petition the Commission for rate regulation.

(3) Within 30 days after the water utility files its petition requesting rate regulation, the Commission must issue an order notifying the water utility of its change in regulatory status to a rate-regulated water utility.

(4) Within 60 days after the Commission notifies the water utility of its change in regulatory status, the water utility must file appropriate tariffs pursuant to ORS 757.205.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 082, OL 2003

Stat. Implemented: ORS 756.040 & Ch. 082, OL 2003

Hist.: NEW

#### **860-036-0505**

##### **Relating to New Water Utilities**

(1) This rule applies to newly constructed water utilities that have not previously offered water service to the public during the past 12 months. This rule does not apply to remodeled, renamed, new additions, or new ownership of existing water supply systems.

(2) A new water utility may initially establish a monthly residential rate exceeding the threshold level established in OAR 860-036-0030 provided it notifies each customer in writing at the time of connection, or earlier, of the customer's right to petition the Commission for rate regulation. The notice shall comply with OAR 860-036-0405. All subsequent rate increases will comply with the requirements of OAR 860-036-0405.

(3) If the Commission receives petitions from 20 percent or more of the new water utility's customers and the water utility charges or proposes to charge for services in excess of the threshold levels established in OAR 860-036-0030, the rules contained in OAR 860-036-0410 will become applicable.

(4) Customer count will be made pursuant to OAR 860-036-0415. The 20 percent calculation of customers will be based upon the total number of customers existing in the month the Commission receives the petition. Petitions will carry over month to month and will be cumulative. Petitioners need not file petitions monthly in order to be counted for any particular month.

(5) Petitions ~~are will be~~ valid for six months~~one year~~, after which they must be resubmitted to the Commission.

Stat. Auth.: ORS Ch. 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.205

Hist.: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434); PUC 8-2002, f. & ef. 2-26-2002 (Order No. 02-116)

### **860-036-0739**

#### **Allocation of Costs by a Water Utility**

##### **(1) As used in this rule:**

**(a) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a water utility;**

**(b) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a water utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the water utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single water utility;**

**(c) "Asset" means any tangible or intangible property of a water utility or other right, entitlement, business opportunity, or other thing of value to which a water utility holds claim that is recorded or should be recorded as a capital expenditure in the water utility's financial statements. All water utility tangible or intangible property, rights, entitlements, business opportunities and things of value should be considered assets, services, or supplies;**

**(d) "Cost" means fully distributed cost, including the water utility's authorized rate of return and all overheads;**

**(e) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;**

**(f) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;**

**(g) "Net book value" means original cost less accumulated depreciation;**

**(h) "Nonregulated activity" means an activity that is not a regulated activity of the water utility as defined in subsection (1)(i) of this rule;**

**(i) "Regulated activity" means a Commission regulated activity that is provided by a water utility directly or indirectly relating to the general operations of the water utility**

such as production, transmission, delivery, or furnishing of water unless the Commission has determined the activity to be exempt from regulation;

(j) "Services" means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All water utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies; and

(k) "Supplies" means any tangible or intangible property of a water utility or other thing of value to which a water utility holds claim that is recorded or should be recorded as an operating expense in the water utility's financial statements. All water utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies.

(2) For purposes of this rule, regulated and nonregulated activities of a water utility shall be accounted for in accordance with the Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners as modified by the Commission.

(3) When a water utility is conducting an affiliate interest transaction, as defined in this rule, the water utility must use the following cost allocation methods:

(a) When an asset is transferred to a water utility from an affiliate, the transfer shall be recorded in the water utility's accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from a water utility to an affiliate, the transfer shall be recorded in the water utility's accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall be recorded in the water utility's accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from a water utility to an affiliate at a fair market value that is greater than net book value, the difference shall be considered a gain to the water utility. The water utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a water utility to an affiliate, sales shall be recorded in the water utility's accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in the water utility's accounts at the water utility's cost or the market rate, whichever is higher.

(e) When services or supplies are sold to a water utility by an affiliate, sales shall be recorded in the water utility's accounts at the affiliate's cost or the market rate, whichever is lower. The affiliate's cost shall be calculated using the water utility's most recently authorized rate of return.

(f) Income taxes shall be calculated for the water utility on a standalone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the water utility shall record income tax expense as if it were determined for the water utility separately for all time periods.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.490 & 757.495

Hist.: NEW

**860-036-0757**

**Accounting for Construction Work In Progress (CWIP)**

**The Commission may allow into rates the costs of a specific capital improvement project in progress if:**

**(1) The water utility uses the additional revenues solely for the purpose of completing the capital improvement project;**

**(2) The water utility demonstrates that its access to capital is limited and it is in the public interest to provide funding for the capitol improvement through rates; and**

**(3) Such costs are approved through tariffs filed with the Commission.**

**Stat. Auth.: ORS 183, 756, 757 & Ch. 202, OL 2003**

**Stats. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003**

**Hist.: NEW**

**860-036-0900**

**Service Territory Allocation**

(1) For purposes of service territory allocation OAR 860-036-0900 through OAR 860-036-0930:

(a) "Allocated territory" means an approved area with boundaries set out in a Commission order granting an application for the allocation of service territory.

(b) "Community water supply system" means a water source and distribution system, whether publicly or privately owned, that serves more than three residences or other users to whom water is provided for public consumption, including but not limited to schools, farm labor camps, industrial establishments, recreational facilities, restaurants, motels, mobile home parks, or group care homes.

(c) "Utility service" means service provided by a water utility as defined in subsection (1)(d) of this rule, any equipment, plant, or facility for the distribution of water to users through a connected and interrelated distribution system. "Utility service" does not include service provided through or by the use of any equipment, plant, or facilities solely for the production and sale of water to other water utilities.

(d) "Water utility" as used in OAR 860-036-0900 through OAR 860-036-0930 means any water system that meets the definition of a water utility in ORS 758.300.

(2) The requirements of this rule apply to all water utilities.

(3) A water utility providing water service ~~may~~ shall make application to the Commission, on forms provided by the Commission, for an order designating the territory it serves adequately and exclusively as its exclusive service territory.

(4) The Commission shall recognize the exclusive service territory of a water utility that has an existing franchise as of October 23, 1999, with a municipality, ~~as an exclusive service territory. Upon application, any such~~ A water utility may apply request an order from to the Commission to designate exclusive service territory area other than that in addition to those identified in the franchise agreement, if the water utility is currently providing adequate and exclusive service to areas ~~outside the areas~~ identified in the franchise agreement.

Stat. Auth.: ORS Ch. 183, 756, 757, ~~& 758~~ & Ch. 202, OL 2003

Stats. Implemented: ORS 758.300 through 758.320 & Ch. 202, OL 2003

Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194); PUC 8-2002, f. & ef. 2-26-2002 (Order No. 02-116); PUC 18-2003, f. & ef. 10-6-03 (Order No. 03-592)

## **860-036-0905**

### **Original Application Requirements**

(1) A completed application requesting an exclusive service territory for area the water utility is currently serving shall include the following:

- (a) The water utility's complete name, address, and telephone number;
- (b) The nature of the water utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;
- (c) The name(s) and address(es) of all corporate officers, directors, partners, or any other person(s) owning an interest in the water utility;
- (d) A statement showing the financial and technical ability of the applicant to provide service to the current territory;
- (e) A detailed map or maps of the water system showing the existing lines and facilities;
- (f) A detailed map or maps identifying the boundaries of the water utility's current service territory marked with a fine-tipped RED pen. The map must identify the map source and the date of the map in the upper left corner of the map. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the utility's current service territory boundaries and enable correlation with a written description of such territory;
- (g) A complete and accurate written description of the water utility's current service territory. The description may be a legal description or may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;
- (h) Evidence that the water utility owns the land upon which the water utility facilities are located, or a copy of an agreement that provides for the continued use of the land, such as an easement or 99-year lease;
- (i) A schedule showing the number of customers currently served, by class and meter size, as well as the number of customers projected to be served when the current service territory is fully occupied; and
- (j) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities having concern with the application, and all known water utilities and community water supply systems in the general area of the current service territory.

(2) The application may also include any adjacent territory that the water utility plans to serve within six months following the date of the application:

- (a) If another water utility or community water supply system is not serving such territory; and
- (b) If the applicant demonstrates that it is more economical and feasible to serve the area by an extension of the applicant's existing facilities than by an extension of the facilities of another water utility or community water supply system. Application requirements for expanded service territory are contained in OAR 860-036-0915.

(3) Within 15 days of making its proposed service territory filing pursuant to OAR 860-036-0906, a water utility must provide written notice to its customers by mail or hand delivery. The notice shall include the following information:

- (a) Name, address, and telephone number of water utility;
- (b) The purpose of the notice;
- (c) An accurate and detailed written description of the territory applied for;
- (d) Filing date;
- (e) A statement that customers may file a protest with the Commission's Administrative Hearings Division; and
- (f) The Commission's toll-free telephone number, TTY number, and mailing and location addresses.

(4) The water utility's application to the Commission must include a copy of the notice to customers and a customer mailing list.

(5) In reviewing a completed application ~~submitted under Chapter 695 Sections 2-4, Oregon Laws 1999~~ for current exclusive service territory, the Commission shall consider the applicant's ability to provide adequate and exclusive service to its existing customers which may include but is not limited to, financial resources, technical ability, customer service history, physical facilities, system capacity, revenue and cost studies, and system compliance with the Oregon Health Division's water rules and regulations.

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 through 758.320

Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194); PUC 13-2002, f & ef. 3-26-02 (Order No. 02-179); PUC 18-2003, f. & ef. 10-6-03 (Order No. 03-592)

## **860-036-0910**

### **Commission Notice and Procedure**

(1) Within 30 days of receipt of a completed service territory application, the Commission shall give **written** notice to any municipality, county, planning council, and governmental authority known to have a concern with the application, and to all known water utilities and community water supply systems ~~in the general area that the water utility is applying for exclusive service territory~~ **in the areas adjacent to the proposed area described in the application.**

(2) The Commission shall publish notice of the filing in a newspaper or newspapers of general circulation in the proposed territory at least once weekly for two consecutive weeks.

(3) Any objections to the application must be filed with the Commission no later than 30 days after the last date that the notice was mailed or published, whichever is later.

(4) The Commission may, on its own motion, hold a hearing on the application; ~~however,~~ **however, but the Commission must hold a hearing on the application if a customer of the water utility requests a hearing on the application within 30 days after the final publication of notice as required in section (2) of this rule of the notice.**

(5) If a hearing is scheduled, the Commission shall give notice of the hearing, setting the **time, date, and place of hearing.** If the hearing is ~~at~~ **by reason of** a customer's request, the Commission shall give notice of the hearing within 30 days ~~after~~ **after** of the request ~~is received by the Commission~~ **is received by the Commission**. The hearing shall be held at a place within or conveniently accessible to the ~~territory covered by area described in~~ **the application.**

**(6) The Commission shall enter an order granting or denying an application for an exclusive service territory under OAR 860-036-0900. The Commission may grant an**

**application subject to such conditions and limitations as the Commission deems appropriate.**

(76) The applicable provisions of ORS 756.500 through 756.610 shall govern the conduct of hearings under this section **and any appeal of the Commission's order.**

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 through 758.320

Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194)

**860-036-0915**

**Filing an Application to Expand Exclusive Service Territory**

(1) A water utility may apply to expand its service territory to serve an area not currently being provided water service. It shall file an expanded service territory application with the Commission.

(2) Upon application by the water utility or by the Commission's own motion, an approved service territory may be expanded to include unserved areas.

(3) In reviewing a completed application ~~submitted under Chapter 695 Sections 2-4, Oregon Laws 1999~~ for an expanded exclusive service territory, the Commission shall consider the applicant's ability to adequately and exclusively provide service to the expanded territory, which may include but is not limited to, financial resources, technical ability, physical facilities, customer demand, system capacity, revenue and cost studies, regional planning, environmental impact, customer service history, impact on existing customers, compliance with the Oregon Health Division's water rules and regulations, economic and feasibility studies, and availability of alternate service.

(4) Notice and hearing of the proposed expansion shall be given as provided in OAR 860-036-0910.

(5) The application must include:

(a) The water utility's complete name and address;

(b) The nature of the utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(c) The name and address of any other water utility or community water supply system that could potentially provide water service within the proposed expanded territory;

(d) The name and address of all corporate officers, directors, partners, or any other person owning an interest in the utility;

(e) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities that may have a concern with the application, and all known water utilities and community water supply systems in the general area of the proposed expanded service territory;

(f) A map identifying the boundaries of the proposed expanded service territory (currently unserved) marked with a fine-tipped BLUE pen. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the expanded service territory boundaries and enable correlation with the description of the proposed expanded territory;

(g) A complete and accurate written description of the proposed expanded territory. The description may reference township, range, and section; interstates, state roads, and local streets;

rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;

(h) The total projected number of customers to be served in the proposed expanded territory by meter size and customer class, that is, single family homes, mobile homes, duplexes, golf course clubhouse, commercial, etc.;

(i) The estimated date applicant plans to begin providing service to customers in the proposed expanded territory;

(j) The estimated flat rate or base and usage rate structure to be utilized, unless an alternative rate structure is supported by the applicant and authorized by the Commission;

(k) A cost study including customer growth projections supporting the proposed water service rates and charges;

(l) A schedule showing by account the projected operating expenses of the water system to serve the expanded service territory when 100 percent of the system is being utilized;

(m) A schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 100 percent of the design capacity of the system;

(n) A statement describing the need for water service in the proposed expanded service territory;

(o) Evidence demonstrating adequate existing or proposed capacities of the system and facilities to serve the proposed expanded territory in terms of estimated average daily customer demand, customer peak demand, and daily pumping capacity per water source in gallons or cubic feet. If development will be in phases, separate this information by phases;

(p) A written description of the type of water treatment required, if necessary;

(q) A schedule showing the projected cost of the proposed system(s) by accounts. If the system is to be built in phases, show information for each phase individually;

(r) A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the water utility for capital improvement, and an explanation of the manner and amount of such funding, including their financial statements and a copy of all contracts or agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility;

(s) Financial statements demonstrating applicant's financial capability to provide service;

(t) A statement showing applicant's technical ability or capacity to procure technical skill necessary to provide service;

(u) A statement describing any impact the expansion of service territory may have on existing customers.

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 through 758.320

Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194)

## **DIVISION 037**

### **860-037-0308**

### **Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs**

(1) The Commission may use up to \$5,000 per biennium of the fees collected under ORS 756.310 to make emergency repairs for privately-owned wastewater utilities that provide service within the boundaries of a city. The Commission may expend monies under the provisions of this rule if the Commission determines that:

(a) Customers of a wastewater utility are without service and are likely to remain without service for an unreasonable period of time;

(b) The wastewater utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and

(c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The Commission shall promptly attempt to recover fees used under this rule from the utility providing water service. No interest shall accrue on the outstanding balance.

(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the fees are expended.

Stat. Auth.: ORS Ch. 183, 756, 757 & Ch. 202, OL 2003

Stats. Implemented: ORS 757.061 & Ch. 202, OL 2003

Hist.: NEW

860-037-0309

Commission-Assessed Civil Penalties for Noncompliance

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 for each violation of state statutes, Oregon administrative rules, or Commission orders related to wastewater utilities.

(2) Prior to assessing civil penalties, the Commission may send a warning letter to the wastewater utility by registered or certified mail. The warning letter must include, but not be limited to, the following:

(a) A statement that the wastewater utility is in violation of state statutes, Oregon administrative rules, or Commission orders;

(b) The time allowed for correcting the violation(s); and

(c) A statement that, if the violations are not corrected within the time allowed, staff may make a recommendation to the Commission to assess civil penalties.

(3) The Commission must give notice of civil penalties by registered or certified mail to the wastewater utility incurring the penalties. The notice must include, but is not limited to the following:

(a) The section of the statute, rule, or order violated;

(b) A concise statement of the violation(s) asserted or charged;

(c) A statement of the amount of civil penalties that may be assessed;

(d) A statement of the wastewater utility's right to request a hearing within 20 calendar days of the date of service of the notice; and

(e) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) Within 20 calendar days of the date of service of the notice, the wastewater utility incurring the penalties may request a hearing. Such request must be in writing and shall state what actions, if any, have been made to correct the violation(s) stated in the notice. If the wastewater utility does not request a hearing within the time allowed, or if the

wastewater utility requesting a hearing fails to appear, the Commission may issue a final order imposing the penalty.

(5) The Commission may require that penalties imposed under this rule be used for the benefit of the customers of wastewater utilities affected by the violation(s).

Stat. Auth.: ORS Ch. 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 183.090, 756.040 & Ch. 202, OL 2003

Hist.: NEW

860-037-0407

Request for Rate Regulation of an Association within the Boundaries of a City

(1) Association members may submit a petition to the Commission at any time for full rate regulation of a wastewater utility owned or operated by an association located within the boundaries of a city. Petitioners must be current customers of the wastewater utility.

(2) Petitions must be in writing, state the purpose of the petition, and include the customer's name, address, telephone number, and signature.

(3) Individual members may submit letters in lieu of a petition.

(4) If 20 percent of association members petition the Commission, the Commission shall issue an order notifying the association of its change in regulatory status to a rate-regulated utility.

(5) The association must file tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.

(6) If the association fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(7) Petitions filed with the Commission may not be withdrawn or rescinded and are valid for six months.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 082, OL 2003

Stat. Implemented: ORS 756.040 & Ch. 082, OL 2003

Hist.: NEW

860-037-0547

Allocation of Costs by a Wastewater Utility

(1) As used in this rule:

(a) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a wastewater utility;

(b) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a wastewater utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the wastewater utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single wastewater utility;

(c) "Asset" means any tangible or intangible property of a wastewater utility or other right, entitlement, business opportunity, or other thing of value to which a wastewater utility holds claim that is recorded or should be recorded as a capital expenditure in the wastewater utility's financial statements. All wastewater utility tangible or intangible

property, rights, entitlements, business opportunities, and things of value should be considered assets, services or supplies;

(d) “Cost” means fully distributed cost, including the wastewater utility’s authorized rate of return and all overheads;

(e) “Fair market value” means the potential sales price that could be obtained by selling an asset in an arm’s-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(f) “Market rate” means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(g) “Net book value” means original cost less accumulated depreciation;

(h) “Nonregulated activity” means an activity that is not a regulated activity of the wastewater utility as defined in subsection (1)(i) of this rule;

(i) “Regulated activity” means a Commission regulated activity that is provided by a wastewater utility directly or indirectly relating to the general operations of the wastewater utility such as production, transmission, delivery, or furnishing of water, and the provision of wastewater services to the public inside the boundaries of a city unless the Commission has determined the activity to be exempt from regulation;

(j) “Services” means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies; and

(k) “Supplies” means any tangible or intangible property of a wastewater utility or other thing of value to which a wastewater utility holds claim that is recorded or should be recorded as an operating expense in the wastewater utility’s financial statements. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities and things of value should be considered assets, services, or supplies.

(2) For purposes of this rule, regulated and nonregulated activities of a wastewater utility shall be accounted for in accordance with the Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners as modified by the Commission.

(3) When a wastewater utility is conducting an affiliate interest transaction, as defined in this rule, the wastewater utility must use the following cost allocation methods:

(a) When an asset is transferred to a wastewater utility from an affiliate, the transfer shall be recorded in the wastewater utility’s accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from a wastewater utility to an affiliate, the transfer shall be recorded in the wastewater utility’s accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall be recorded in the wastewater utility’s accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from a wastewater utility to an affiliate at a fair market value that is greater than net book value, the difference shall be considered a gain to the wastewater utility. The wastewater utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a wastewater utility to an affiliate, sales shall be recorded in the wastewater utility’s accounts at tariffed rates if an applicable tariff is on

file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in the wastewater utility's accounts at the wastewater utility's cost or the market rate, whichever is higher.

(e) When services or supplies are sold to a wastewater utility by an affiliate, sales shall be recorded in the wastewater utility's accounts at the wastewater utility's cost or the market rate, whichever is lower. The affiliate's cost shall be calculated using the wastewater utility's most recently authorized rate of return.

(f) Income taxes shall be calculated for the wastewater utility on a standalone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the wastewater utility shall record income tax expense as if it were determined for the wastewater utility separately for all time periods.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.490 & 757.495

Hist.: NEW

860-037-0570

Accounting for Construction Work In Progress (CWIP)

This rule applies to wastewater utilities that provide service inside the boundaries of a city. The Commission may allow into rates the costs of a specific capital improvement project in progress if:

(1) The wastewater utility uses the additional revenues solely for the purpose of completing the capital improvement project;

(2) The wastewater utility demonstrates that its access to capital is limited and it is in the public interest to provide funding for the capital improvement through rates; and

(3) Such costs are approved through tariffs filed with the Commission.

Stat. Auth.: ORS Ch. 183, 756 & 757

Stat. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003

Hist.: NEW